FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
NAGPUR BENCH, NAGPUR

Second Appeal No. 521/2004

Appeal	District :
Application No.	of 200
Writ petition	

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

CORAM : Smt. V. A. Naik, J.
DATED : February 6, 2007.

Head Shri Lapalikar for the appellant, and Shri Kidiley for the respondents.

The appellant is the original defendant no. 1. A suit was filed by the plaintiffs for possession of the suit property on the basis of title. It was the case of the plaintiffs that the plaintiff no.1- Indirabai became the owner of the house property in view of the sale deed executed by one Nathu Kohale, her father-in-law, in her favour on 19/2/1988, and that the plaintiff no.2 was the owner of the open plot which was gifted to him by his grandfather Nathu Kohale by gift deed dated 14/12/1987.

The defendants filed their written statement and denied the claim of the plaintiffs. It was the case of the defendants that the suit property was the ancestral property in the hands of Nathu Kohale and, therefore, Nathu Kohale had no right to execute the gift deed dated 14/12/1987 as

also the sale deed dated 19/12/1988. It was the case of the defendants that since the defendant no. 1 was the widow of one of the sons of Nathu Kohale and the defendant no.2 is the grandson of Nathu Kohale, they had shares and interest in the suit property.

Trial and the appellate Courts held that the suit property was not the ancestral property in the hands of Nathu Kohale and was his self-acquired property. Consequently, the Courts held that Nathu Kohale had a right to validly transfer the suit property in favour of the plaintiffs by the gift deed and sale deed executed by him on 14/12/1987 and 19/2/1988. The findings recorded by both the Courts are pure findings of facts and do not give rise to the substantial question of law.

The counsel for the appellant, however, submitted that it is apparent from the evidence of the defendants that Nathu Kohale and his sons had sold certain properties in the year 1956 and, therefore, it could be said that the suit properties were purchased by Nathu Kohale from the consideration which was received from the sale of the joint family properties in the year 1956. The counsel for the appellant was, however, unable to show the pleadings or the evidence in respect of aforesaid submissions. There was nothing on record to show that Nathu Kohale had purchased the suit

property after he and his sons had sold certain joint family properties in the year 1956.

Since no substantial question of law arises for consideration in this second appeal, it is dismissed with no order as to costs.

JUDGE

RMP